

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Enoch Sowah	Team: Squad #1	CCRB Case #: 202001652	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 02/26/2020 11:00 PM	Location of Incident: Near the corner of East 155th Street and Courtland Avenue	Precinct: 40	18 Mo. SOL 8/26/2021	EO SOL 4/12/2022	
Date/Time CV Reported Thu, 02/27/2020 4:28 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Thu, 02/27/2020 6:32 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Eric Dym	00000	933762	PSA 7
2. POM Manolin Molina	27653	936051	PSA 7
3. LT Eric Konoski	00000	930497	PSA 7
4. POM Elvis Duran	21865	946965	PSA 7

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Luigi Feliz	5945	967505	PSA 7
2. CPT Jerome Bacchi	00000	923531	PSA 7
3. POM Jose Tejada	06150	960018	PSA 7
4. POM Christophe Boyce	05100	960272	PSA 7
5. POM Nivez Hernandez	19129	958693	PSA 7
6. POM Francisco Orellana	10999	954194	PSA 7
7. POF Nashaly Malave	06803	964630	PSA 7
8. POM Pedro Silverio	00829	966850	PSA 7
9. POM Surrendra Seewah	13810	956248	PSA 7
10. POM Jose Corniel	12012	955842	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A.POM Manolin Molina	Abuse: Police Officer Manolin Molina stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Elvis Duran	Abuse: Police Officer Elvis Duran stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.LT Eric Dym	Abuse: Lieutenant Eric Dym stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	

Officer(s)	Allegation	Investigator Recommendation
D.LT Eric Dym	Abuse: Lieutenant Eric Dym threatened to seize § 87(2)(b) property.	
E.LT Eric Dym	Abuse: Lieutenant Eric Dym threatened to arrest § 87(2)(b)	
F.LT Eric Dym	Abuse: Lieutenant Eric Dym threatened to arrest § 87(2)(b)	
G.LT Eric Dym	Abuse: Lieutenant Eric Dym threatened to arrest § 87(2)(b)	
H.LT Eric Dym	Abuse: Lieutenant Eric Dym threatened to damage § 87(2)(b) property.	
I.POM Elvis Duran	Abuse: Police Officer Elvis Duran frisked § 87(2)(b)	
J.LT Eric Konoski	Abuse: Lieutenant Eric Konoski frisked § 87(2)(b)	
K.LT Eric Konoski	Abuse: Lieutenant Eric Konoski frisked § 87(2)(b)	
L.LT Eric Dym	Abuse: Lieutenant Eric Dym searched the vehicle in which § 87(2)(b), § 87(2)(b) and § 87(2)(b) were occupants.	
M.LT Eric Konoski	Abuse: Lieutenant Eric Konoski searched the vehicle in which § 87(2)(b), § 87(2)(b) and § 87(2)(b) were occupants.	
N.LT Eric Dym	Abuse: Lieutenant Eric Dym detained § 87(2)(b)	
O.LT Eric Dym	Abuse: Lieutenant Eric Dym detained § 87(2)(b)	
P.LT Eric Dym	Abuse: Lieutenant Eric Dym detained § 87(2)(b)	
Q.POM Manolin Molina	Abuse: Police Officer Manolin Molina issued a summons to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

On February 27, 2020, § 87(2)(b) filed this complaint in person with the CCRB on behalf of her 20 year old brother, § 87(2)(b) and his two cousins, 21 year old § 87(2)(b) and 20 year old § 87(2)(b).

On February 26, 2020, at approximately 11 p.m., in the vicinity of East 155th Street and Courtland Avenue in the Bronx, Police Officers Manolin Molina, Elvis Duran, and Lieutenant Eric Dym stopped the vehicle in which § 87(2)(b), § 87(2)(b) and § 87(2)(b) were occupants (Allegations A through C: Abuse of Authority, § 87(2)(g) Lt. Dym threatened to seize § 87(2)(b) property (Allegations D: Abuse of Authority, § 87(2)(g) threatened to arrest § 87(2)(b) and § 87(2)(b) (Allegations E through G: Abuse of Authority, § 87(2)(g) and threatened to damage § 87(2)(b) property (Allegation H: Abuse of Authority, § 87(2)(g) PO Duran and Lieutenant Eric Konoski frisked § 87(2)(b) and § 87(2)(b) respectively (Allegations I through K: Abuse of Authority, § 87(2)(g) Lt. Dym and Lt. Konoski searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants (Allegations L and M: Abuse of Authority, § 87(2)(g) Lt. Dym detained § 87(2)(b) and § 87(2)(b) (Allegations N through P: Abuse of Authority, § 87(2)(g) PO Molina issued a summons to § 87(2)(b) (Allegation Q: Abuse of Authority, § 87(2)(g) § 87(2)(g), § 87(4-b)

§ 87(2)(b) received a summons for disorderly conduct as a result of this incident (Board Review 01), whereas § 87(2)(b) and § 87(2)(b) were arrested for obstructing governmental administration § 87(2)(b)

Seventeen police body worn camera (BWC) footages were received for this incident (Board Review 05 – Board Review 21).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Manolin Molina stopped the vehicle in which § 87(2)(b), § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (B) Abuse of Authority: Police Officer Elvis Duran stopped the vehicle in which § 87(2)(b), § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (C) Abuse of Authority: Lieutenant Eric Dym stopped the vehicle in which § 87(2)(b), § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (L) Abuse of Authority: Lieutenant Eric Dym searched the vehicle in which § 87(2)(b), § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (M) Abuse of Authority: Lieutenant Eric Konoski searched the vehicle in which § 87(2)(b), § 87(2)(b) and § 87(2)(b) were occupants.

The following facts are not disputed. On February 26, 2020, at approximately 10:55 p.m., Captain Jerome Bacchi of PSA 7 requested additional units to East 155th Street and Cortland Avenue in the Bronx, which was approximately a block away from the PSA 7 stationhouse, in regard to a vehicle stop of a white Mercedes Benz that Capt. Baachi conducted. Multiple uniformed and plainclothes officers, including Lt. Dym, Lt. Konoski, PO Molina, and PO Duran, all from the PSA 7 Anticrime unit, responded to the scene to assist Capt. Baachi. At some point, PO Molina, PO Duran, and Lt. Dym approached another vehicle, a grey Daytona Dodge Charger, that was legally parked a few feet from the white Mercedes Benz, and stopped its occupants, § 87(2)(b) and § 87(2)(b) and ultimately searched the vehicle. The circumstances regarding the vehicle stop and search are, however, disputed.

§ 87(2)(b) (Board Review 04), who was in the driver's seat of the Dodge Charger, which is registered to § 87(2)(b) mother, § 87(2)(b) said that he and his two cousins, § 87(2)(b)

and § 87(2)(b) who were in the front and rear passengers' seats, respectively, drove the vehicle to purchase some food from a local fast food restaurant, and then parallel parked the vehicle at an open street parking spot at the incident location, which was about two blocks away from § 87(2)(b) residence. The vehicle had no window tints or any defects, was completely turned off, and all its windows were fully closed. The three occupants remained in the vehicle, listened to music, which played at minimum volume, did not interact with anyone else, nor did they observe any police activity at the time they parked the vehicle. A few minutes later, § 87(2)(b) observed plainclothes officers knocking on his driver's and passenger's side windows. § 87(2)(b) did not see the officers at any point prior to their approach, nor did he know why they approached his vehicle. § 87(2)(b) slightly lowered his driver's side window, and Lt. Dym, identified via investigation, said that there was an odor of marijuana emanating from the vehicle, and thus ordered all the occupants to exit. § 87(2)(b) who acknowledged being familiar with the odor of marijuana, said he and the occupants in his vehicle had never consumed marijuana, did not have marijuana in the vehicle, nor was there any odor of marijuana coming from his vehicle. § 87(2)(b) did not recall if he detected any odor of marijuana in the vicinity, but said he informed Lt. Dym that there was no odor of marijuana from his vehicle, and thus refused to exit his vehicle. § 87(2)(b) then called his mother and sister who arrived on scene a few minutes later and spoke with the officers. § 87(2)(b) then instructed § 87(2)(b) and the other occupants in the vehicle to comply with the officers' orders. § 87(2)(b) and § 87(2)(b) exited the vehicle, at which point officers searched the vehicle. The search yielded negative results for any marijuana or contraband. § 87(2)(b) and § 87(2)(b) were uncooperative with the investigation (Board Review 04).

The 17 BWC footages received captured portions of this incident. Capt. Baachi's BWC (Board Review 05), begins with Capt. Baachi exiting his vehicle and approaching a white Mercedes Benz sedan with New York License plate number § 87(2)(b) which is facing west on East 155th Street, which is a one way street, and heading towards Cortland Avenue. It is dark outside, and there are minimal street and building lights illuminating the street. At 00:47, there are rows of vehicles parallelly parked on the north and south sides of the street. One of the parallel parked vehicles, a grey Dodge Charger, which is parked on the south side of the street, is approximately three feet from the Mercedes Benz, and has its head and rear lights activated. At 00:54, Capt. Baachi approaches the driver side of the Mercedes Benz, and orders the driver, identified via investigation as § 87(2)(b) to produce his driver's license. There is a female occupant in the front passenger's seat, and the driver's side window of the Mercedes Benz is completely lowered. At 01:20, Capt. Baachi informs § 87(2)(b) that there is a strong odor of marijuana emanating from the vehicle, and asks § 87(2)(b) if he has any marijuana in the vehicle. § 87(2)(b) acknowledges smoking marijuana, but denies having any marijuana in the vehicle. At 01:33, Capt. Baachi says to § 87(2)(b) "Well, it smells like you were just smoking because it is hitting me in the face like a brick." At 01:50, Capt. Baachi returns to his vehicle, and at 03:40, goes over the radio, and requests for "housing crime" to respond to his location in regard to the stop of the Mercedes Benz. Capt. Baachi does not provide any other information, nor does he reference any other vehicle. At 05:08, Capt. Baachi exits his vehicle, and approaches the Mercedes Benz together with Police Officers Christopher Boyce and Jose Tejada, identified via investigation, who arrive on scene. At 05:29, PO Duran, PO Molina, Lt. Dym, identified via investigation, and some other plainclothes officers, all arrive on scene, and approach the Mercedes Benz. The grey Dodge Charger is still parallel parked, and has its head and rear lights activated. At 05:40, the driver's door of the Mercedes Benz is ajar, and PO Boyce frisks and searches § 87(2)(b) who is out of the vehicle. At 05:58, PO Duran walks towards the Dodge Charger, and shines his flashlight towards the front passenger's seat. Lt. Dym is standing approximately two feet from the rear of the Dodge Charger, but has his back facing the vehicle. At 06:09, PO Molina is standing at the driver's door of the Dodge Charger, and appears to be shining his flashlight into the vehicle. The rest of the officers, including Capt. Baachi, all remain by the Mercedes Benz and interact with § 87(2)(b) At 06:19, Lt. Dym approaches the

driver's side of the Dodge Charger. At 06:52, Capt. Baachi asks § 87(2)(b) if he has any marijuana in the vehicle because the marijuana odor emanating from his vehicle is strong. § 87(2)(b) says no. At 06:55, Lt. Dym approaches Cpt. Baachi, provides the license plate number of the Dodge Charger, and asks Capt. Baachi to run the license plate because the occupants in that vehicle are refusing to comply with officers' orders. Lt. Dym then walks towards the front passenger's side of the Dodge Charger, while Capt. Baachi appears to be typing on his handheld device. PO Molina and PO Duran are standing by the rear of Dodge Charger, while Lt. Dym orders the occupants in the Dodge Charger to lower their windows. At 10:36, Capt. Baachi approaches the rear of Dodge Charger, and asks why the vehicle is being stopped. At 10:42, PO Molina appears to say to Capt. Baachi, "There is a smell of weed coming from the car," to which Capt. Baachi replies, "Ah marijuana from the car?" At 11:15, Capt. Baachi returns to the rear of white Mercedes Benz, which has most of its doors ajar, and says, "The car just really reeks of marijuana," and that he can still detect the odor from where he is standing. At 15:20, PO Tejada informs Capt. Baachi that he found a "bag" and a "blunt" inside the white Mercedes Benz. At 17:24, Capt. Baachi uses a tint meter to test the windows of Mercedes Benz. At 20:00, Capt. Baachi returns to his vehicle, and does not approach nor interact with the occupants in the Dodge Charger, nor do the windows of the Dodge Charger appear to be tested for tints.

Lt. Dym's BWC (Board Review 06) at 00:53, captures an officer who is not depicted, saying to Lt. Dym, "The car behind you." At 01:03, PO Duran walks towards the Dodge Charger. At 01:05, PO Molina is on the driver's side of the Dodge Charger, and appears to be the first officer by the vehicle. Lt. Dym also walks closer to the vehicle, but is standing by the rear and has his back towards the vehicle. At 01:22, one of the officers by the Dodge Charger, it is unclear who, says, "I am not going to ask you again, step out of the car." At 01:25, Lt. Dym approaches the driver's side of the Dodge Charger, which has its front and rear windows fully closed. Lt. Dym and PO Molina shine their flashlights into the driver's side window, and appear to be looking inside the vehicle. § 87(2)(b) and § 87(2)(b) who are in the driver and front passenger's seats, respectively, appear to be on their phones. It is, however, unclear from the footage, given the lighting conditions at the location, whether the front and rear windows on the driver's side are tinted. At 01:38 PO Duran informs Lt. Dym that the windows on the passengers' sides are also fully closed. At 01:43, PO Molina says to Lt. Dym, "I smell weed coming from the car." At 02:42, Lt. Dym approaches the vehicle's front passenger side, knocks on the window, and says, "Sir, you are being stopped by the New York City Police, you have to open the door," and that the officers smell marijuana in the vehicle. It is unclear from the footage if the vehicle's front passenger window is tinted. At 03:07, the front passenger's window is slightly lowered, and § 87(2)(b) tells Lt. Dym that no one is smoking marijuana in the vehicle. The front window is then closed. At 03:30, Lt. Dym orders PO Duran to move one of the officers' vehicles, and park it directly in front the Dodge Charger. He then informs the occupants in the vehicle that they are not leaving until the officers have concluded their law enforcement activities. At 04:41, the front passenger window is slightly lowered again, and § 87(2)(b) asks Lt. Dym if he smells marijuana from the vehicle. Lt. Dym replies, "Yes I do." The front window is then closed. At 04:54, PO Duran parks an unmarked vehicle directly in front of the Dodge Charger. At 06:36, Lt. Dym approaches the driver's side, and asks § 87(2)(b) who is still in the vehicle with the windows closed, if he is "under the influence," because he seems under the influence. At 08:19, § 87(2)(b) and § 87(2)(b) arrive on scene, and § 87(2)(b) tells § 87(2)(b) to comply with the officers' orders and exit the vehicle. At 09:13, § 87(2)(b) and § 87(2)(b) exit the vehicle. At 10:41, Lt. Dym orders PO Duran to "check the car." PO Duran then walks towards the driver's side door. At 10:43, Lt. Konoski, identified via investigation, appears to enter the front and rear seats on the passenger's side of the Dodge Charger. At 11:31, PO Duran enters the rear seat on the driver's side. At 12:58, PO Duran moves to the passenger's side and enters the front and rear seats. At 15:44, Lt. Dym asks about the status of the vehicle, to which PO Duran replies, "It is clean."

Lt. Konoski's BWC (Board Review 07) at 10:33 shows Lt. Konoski shining his flashlight into the front passenger's seat of the vehicle, and then slightly bending his head into the vehicle. At 10:42, Lt. Dym moves to the rear of the vehicle on the front passenger's side, slightly bends his head into the vehicle, and shines his flashlight into the vehicle. At 11:34, Lt. Konoski returns to the front passenger seat, and appears to throw a set of keys into the vehicle. Lt. Konoski then lifts what appears to be a seat covering on the front passenger seat.

PO Molina and PO Duran's BWCs (Board Reviews 10 and 09) do not capture their initial approach of the Dodge Charger (see Allegations R and S), and their respective recordings of this incident begin a few minutes after Lt. Dym approaches the Dodge Charger.

PO Molina, Lt. Dym, PO Duran, and Lt. Konoski (Board Review 22 – Board Review 25), did not recall much about this incident, but acknowledged that the Dodge Charger was properly parked at the location. Lt. Dym, PO Molina, and PO Duran, did not have independent recollections about the incident involving the white Mercedes Benz, though they acknowledged being at the location because of that vehicle stop, and said they did not recall detecting any odor of marijuana from the Mercedes Benz, did not recall being informed that the driver of that vehicle had consumed marijuana, or that officers had recovered marijuana from that vehicle.

PO Molina (Board Review 22) said he detected a strong and pungent smell of marijuana when he arrived on scene, and thus approached the Dodge Charger to investigate the origins of the marijuana odor because that was the vehicle closest to him when he detected the odor. PO Molina acknowledged that he was not certain from where the marijuana odor was emanating, but said his suspicion that the odor emanated from the Dodge Charger increased when the occupants in the vehicle refused to lower their windows and speak with him. PO Molina had no other reasons for believing that the odor of marijuana emanated from the Dodge Charger, did not recall whether the odor of marijuana intensified when he approached the vehicle, nor did he recall whether the odor of marijuana was that of burnt or unburnt marijuana. PO Molina had no other reasons for approaching the vehicle, and did not recall whether the vehicle's windows were tinted or any traffic or vehicle infractions. PO Molina did not ultimately know why officers searched the Dodge Charger, nor did he know if any contraband was recovered from the vehicle.

PO Duran (Board Review 24) acknowledged approaching the Dodge Charger with PO Molina, and said they did so because the vehicle's engine was running, and that all its windows were darkly tinted. PO Duran determined that the vehicle's windows were darkly tinted because he could not see inside the vehicle, and said the lighting condition at the location, which he described as well lit, did not factor into his inability to see inside the vehicle. PO Duran did not test the vehicle for tints, nor did he recall if any other officer did so. PO Duran denied that the officers approached the Dodge Charger primarily because of the odor of marijuana, and said the officers detected the odor of marijuana after they approached the vehicle to investigate the possible vehicle infraction. PO Duran said the odor of marijuana intensified when § 87(2)(b) ultimately lowered the driver's side window, that he at that point concluded that the odor of marijuana was from the vehicle, and was thus the basis for searching the vehicle. PO Duran did not recall if marijuana or contraband was recovered from the vehicle, nor did he recall why § 87(2)(b) did not receive a summons for tinted windows.

Lt. Dym (Board Review 23) said his attention was first drawn to the Dodge Charger when he heard PO Molina and PO Duran repeatedly ordering the occupants in the vehicle to lower their windows and ultimately exit the vehicle, that he did not know why the officers approached the vehicle, nor did he otherwise instruct the officers to approach and stop the vehicle's occupants. Lt. Dym approached the vehicle to assist PO Duran and PO Molina, and did not recall observing any window tints or any other infractions on the vehicle. Lt. Dym acknowledged that vehicle's windows were for the most part of the incident fully closed, but said he detected a strong odor of marijuana when he was around the vehicle, and that the stench around the vehicle was so strong that he believed the odor emanated from the vehicle. He, however, did not recall whether the odor was that of burnt or unburnt marijuana, did not recall any other factors that led him to believe that the odor

emanated from the Dodge Charger, and said officers searched the vehicle primarily because of the odor of marijuana.

Lt. Konoski (Board Review 25) said that his attention was drawn to the Dodge Charger when he observed PO Molina, PO Duran, and Lt. Dym standing by the vehicle, and ordering the occupants to exit, and thus approached the vehicle to assist his colleagues. Lt. Konoski did not know why the officers approached the vehicle, did not recall observing any window tints or vehicle defects, and said he subsequently found out that PO Molina and PO Duran approached the vehicle because they detected an odor of marijuana emanating from the vehicle. Lt. Konoski acknowledged detecting an odor of marijuana in the vicinity when he arrived on scene, and said the odor intensified when he approached the Dodge Charger, and thus believed the odor was from that vehicle. Lt. Konoski did not recall searching the vehicle, but said he was justified searching the vehicle because of the odor of marijuana. Lt. Konoski had no other reasons for searching the vehicle, nor did he recall whether any marijuana was recovered from the vehicle.

A person in the driver's seat of a vehicle with the engine on and the keys in the ignition can be found to be operating a motor vehicle, without the need for proof that the person ever put the car in motion. People v. Garcia, 61 Misc. 3d 14 (2018) (Board Review 26).

No person shall operate on any public highway, road, or street, any motor vehicle which the windshield, side and rear windows are composed of, covered by, or treated with any material which has a light transmittance of less than 70%. NYS Vehicle and Traffic Law, Title 3 Article 9, § 375.12-a (b) (2) (Board Review 27).

Officers need founded suspicion that criminality of afoot in order to approach, ask, and gain explanatory information. Officers can stop, detain, and question an individual if they have reasonable suspicion that the individual has committed, is committing, or is about to commit a crime, People v. DeBour, 40 N.Y.2d 210, 224 (1976) (Board Review 28).

Reasonable suspicion is defined as the quantum of knowledge to induce an ordinarily prudent and cautious person under the circumstances to believe criminal activity is at hand, and such a stop must be predicated on specific, articulable facts, and not vague or unparticularized hunches, People v. Cantor, 36 N.Y.2d 106 (1975) (Board Review 29).

The smell of marijuana smoke is sufficient to provide officers with probable cause to search an automobile and its occupants, People v. Chestnut, 43 A.D.2d 260 (1974) (Board Review 30).

It remains disputed whether the occupants of the Dodge Charger were stopped because of a vehicle infraction and/or suspicion that there was marijuana in the vehicle. PO Duran said that the officers stopped the vehicle because of dark window tints, whereas PO Molina said the vehicle was approached and ultimately stopped because of an odor of marijuana. Lt. Dym, who the BWC depicts exercising a supervisory role during the entire incident and as such has the above allegations also pleaded against him, did not know why the officers approached the vehicle, and § 87(2)(b) denied that his vehicle's windows were tinted or that it emitted an odor of marijuana. It is unclear from the BWC whether any of the windows of the Dodge Charger were darkly tinted, however, the footage establishes that none of the officers mentioned window tints or any vehicle or traffic infractions as the basis for approaching and ultimately stopping the vehicle, and that PO Molina and Lt. Dym informed the vehicle's occupants and Capt. Baachi that the vehicle was stopped because officers detected an odor of marijuana from the vehicle. Additionally, the BWC shows that Capt. Baachi had a tint meter with him on scene, and that none of the officers tested the windows of the Dodge Charger, nor did the driver receive a summons for a tint violation. Given this, and that PO Molina, Lt. Dym, and Lt. Konoski did not recall observing any dark window tints or any other infractions on the vehicle, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

The BWC

established that that Lt. Dym, PO Molina, PO Duran, Lt. Konoski, all arrived on scene in regard to Capt. Baachi's stop of the white Mercedes Benz, whose driver, § 87(2)(b) acknowledged smoking marijuana, and from whose vehicle a quantity of marijuana was recovered. Additionally, the BWC and officers' testimonies provide no evidence that the officers suspected that the Dodge Charger was in any way connected to the Mercedes Benz. The footage shows that the windows and doors of the Mercedes Benz were ajar at the time additional officers arrived, and that Capt. Baachi repeatedly stated that the odor of marijuana emanating from the Mercedes Benz was so strong that he could smell it from the rear of the vehicle. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) given that all the officers testified, and which is further corroborated by the BWC, that the doors and windows of the Dodge Charger were fully closed for most of the incident. Given this, that none of the officers provided any additional reasons to believe that the odor of marijuana emanated from the Dodge Charger, that PO Molina acknowledged that he was uncertain that the odor of marijuana emanated from the Dodge Charger at the time he approached, and the fact that no marijuana was ultimately recovered from the Dodge Charger, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (D) Abuse of Authority: Lieutenant Eric Dym threatened to seize § 87(2)(b) property.

It is undisputed that Lt. Dym informed the occupants of the Dodge Charger that their vehicle would be towed if they did not comply with the officers' orders to lower their windows and exit the vehicle.

§ 87(2)(b) said that he's had multiple prior encounters with Lt. Dym, and that he and the occupants in his vehicle refused to comply with any of the officers' orders because they were afraid of the officers, felt that they were being unduly harassed, and that the officers had no reason nor basis for approaching them.

As previously discussed, § 87(2)(b) and § 87(2)(b) were uncooperative with the investigation.

Lt. Dym's BWC at 03:00, shows Lt. Dym at the front passenger's side of the Dodge Charger ordering the occupants in the vehicle to lower their windows, open the vehicle's door, and for the driver to provide his license and insurance. At 03:19, § 87(2)(b) replies, "No, I fear for my life." At 03:29, Lt. Dym says to § 87(2)(b) "If you do not comply, I am going to call a tow truck, and have you towed." At 03:40, Lt. Dym says to the occupants in the vehicle, "If you guys do not comply, I will call a tow truck. I will tow the car with you in it."

Lt. Dym acknowledged making statements about seizing the Dodge Charger, and said he did so because § 87(2)(b) and § 87(2)(b) were uncooperative, failed to comply with the officers' orders to exit the vehicle and provide identification, and thus consequently prevented the officers from conducting their lawful duties. Lt. Dym had no other reasons for threatening to seize the vehicle, said the officers would have been justified in seizing the vehicle, but did not recall if the vehicle could have been seized with the occupants inside, nor did he recall why he threatened to tow the vehicle with the occupants inside.

Officers may seize property if there is reasonable cause to believe the property was used in the commission, aiding, or furtherance of a crime, NYPD Patrol Guide Procedure 208-26 (Board Review 36).

A vehicle cannot be impounded or removed if it is occupied by any person, New York City (NYC) Administrative Code § 19-169.1(c) (Board Review 37).

While it is not disputed that § 87(2)(b) and § 87(2)(b) refused multiple orders to lower their vehicle's windows and/or exit their vehicle, § 87(2)(g)

As previously established, Lt. Dym, PO Duran, and PO Molina, all acknowledged that the Dodge Charger was legitimately parked, was not in violation of any vehicle or traffic infraction, nor did the officers have any articulable reason to believe the vehicle contained marijuana, or had otherwise been used in the commission, aiding, or furtherance of a crime. § 87(2)(g)

Allegation (E) Abuse of Authority: Lieutenant Eric Dym threatened to arrest § 87(2)(b)

Allegation (F) Abuse of Authority: Lieutenant Eric Dym threatened to arrest § 87(2)(b)

Allegation (G) Abuse of Authority: Lieutenant Eric Dym threatened to arrest § 87(2)(b)

Allegation (H) Abuse of Authority: Lieutenant Eric Dym threatened to damage § 87(2)(b) property.

Allegation (N) Abuse of Authority: Lieutenant Eric Dym detained § 87(2)(b)

Allegation (O) Abuse of Authority: Lieutenant Eric Dym detained § 87(2)(b)

Allegation (P) Abuse of Authority: Lieutenant Eric Dym detained § 87(2)(b)

It is not disputed that Lt. Dym informed the occupants in the Dodge Charger that they would be arrested, and that their vehicle's window would be broken if they failed to comply with the officers' orders, nor is it disputed that § 87(2)(b) and § 87(2)(b) were all removed to the PSA 7 stationhouse and lodged in the holding cells. § 87(2)(b) was ultimately issued a disorderly conduct summons (Board Review 01), whereas § 87(2)(b) and § 87(2)(b) were arrested and charged with obstruction of governmental administration, but their arrests were voided and sealed (Board Review 02).

As previously discussed, § 87(2)(b) and § 87(2)(b) were uncooperative with the investigation, and § 87(2)(b) said he and the occupants in his vehicle refused to comply with any of the officers' orders because they feared for their lives, and believed they were being stopped without cause, and felt targeted and harassed. § 87(2)(b) did not know why he and the other occupants in the vehicle were removed to the PSA 7 stationhouse, and said they spent approximately an hour in the cells before being released.

Lt. Dym's BWC at 04:38, shows Lt. Dym informing the occupants in the vehicle that they "will be held under arrest" if they continue to fail to lower the vehicle's windows and exit the vehicle. At 04:46, Lt. Dym, while knocking on the front passenger window, says, "If I have to break the window, I am going to," and "If you don't step out of the car, we are breaking the window." At 05:26, Lt. Dym asks one of the officers for the "seatbelt thing," and asks for gloves. At 05:46, Lt. Dym approaches Capt. Baachi and informs him that § 87(2)(b) and § 87(2)(b) are refusing to exit the vehicle. Capt. Baachi asks why the occupants are refusing to exit the vehicle, and Lt. Dym replies, "We've dealt with him before. He says he doesn't have to open the window, and that we don't smell weed." Lt. Dym then tells Capt. Baachi that they could "wait it out." Lt. Dym returns to the front passenger's door and continues knocking on the front window. At 09:25, § 87(2)(b) exits the vehicle, is handcuffed, and brought to the rear of the vehicle. At 09:26, § 87(2)(b) asks why § 87(2)(b) is being "detained." Lt. Dym replies,

“failing to comply with lawful orders.” At 09:46, § 87(2)(b) and § 87(2)(b) are ordered out of the vehicle, handcuffed, and brought to the rear of the vehicle. At 11:09, Lt. Dym orders § 87(2)(b) and § 87(2)(b) to be escorted to the PSA 7 stationhouse. At 11:46, Lt. Dym informs § 87(2)(b) and § 87(2)(b) that the occupants in the vehicle are being detained and removed to the stationhouse for failing to comply with lawful orders.

Lt. Dym said he threatened to arrest the occupants in the vehicle, and break the vehicle’s windows because the occupants had failed to comply with lawful orders to lower their windows, exit the vehicle, and provide identification. Lt. Dym had no other reasons for making those statements, and said he ordered the three occupants to be removed to the stationhouse because the stationhouse was close by, and felt it was more feasible to issue the occupants in the vehicle summonses from the stationhouse given that there was another police enforcement activity at the location. Lt. Dym had no other reasons for ordering the removal of § 87(2)(b) and § 87(2)(b) to the stationhouse, did not recall how long they were kept at the stationhouse, did not recall whether any of the occupants was arrested or received summonses, nor did he recall ordering the occupants to be arrested or issued summonses. Lt. Dym did not know why § 87(2)(b) and § 87(2)(b) arrests were voided and sealed.

PO Duran documented the arrests of § 87(2)(b) and § 87(2)(b) in his memo book, which revealed that the two were charged with obstruction of governmental administration (OGA) (Board Review 48), but PO Duran did not recall processing either of the arrests, nor did he know why the arrests were ultimately voided.

No person shall fail or refuse to comply with any lawful order or direction of any police officer or any other person duly empowered to regulate traffic, New York Vehicle and Traffic Law 1102 (Board Review 33).

A person is guilty of obstruction of governmental administration when he intentionally obstructs, impairs, prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act, NYS Penal Law § 195.05 (Board Review 34).

Police officers can damage property if doing so is reasonably necessary to carry out their duties, Onderdonk v. State 170 Misc. 2d 155 (1996) (Board Review 35).

To perform public service or law enforcement functions, officers may approach and request information (Level 1) from a person insofar as they have an objective credible reason that is not necessarily indicative of criminality. A reason is objectively credible if it is based on more than a hunch or a whim. A person approached during a Level 1 encounter is free to walk away and/or refuse to answer officers’ questions, and their refusal to answer questions does not escalate the encounter. Officers, however, can stop, detain, and question an individual if they have reasonable suspicion that the individual has committed, is committing, or is about to commit a crime, People v. DeBour, 40 N.Y.2d 210, 224 (1976) (Board Review 28). Reasonable suspicion is defined as the quantum of knowledge to induce an ordinarily prudent and cautious person under the circumstances to believe criminal activity is at hand, and such a stop must be predicated on specific, articulable facts, and not vague or unparticularized hunches, People v. Cantor, 36 N.Y.2d 106 (1975) (Board Review 29).

§ 87(2)(g)

§ 87(2)(g)

Allegation (I) Abuse of Authority: Police Officer Elvis Duran frisked § 87(2)(b)

Allegation (J) Abuse of Authority: Lieutenant Eric Konoski frisked § 87(2)(b)

Allegation (K) Abuse of Authority: Lieutenant Eric Konoski frisked § 87(2)(b)

§ 87(2)(b) did not allege being frisked, and as already discussed, § 87(2)(b) and § 87(2)(b) were uncooperative with the investigation.

PO Tejeda's BWC (Board Review 21) at 09:34, shows PO Duran escorting § 87(2)(b) to the rear of the vehicle after he appears to have been handcuffed. PO Duran then appears to move his right hand around § 87(2)(b) pants, but is unclear from the footage exactly what is happening due to the fact that is dark outside, and PO Tejeda is standing approximately three to four feet away. At 10:07, PO Boyce escorts § 87(2)(b) to the rear of the vehicle, and he also appears to be handcuffed. At 10:09, PO Boyce appears to move his hand around § 87(2)(b) lower body and pants, but it is again unclear exactly what is happening. At 10:38, § 87(2)(b) is also at the rear of the vehicle, and PO Boyce appears to move his hands around § 87(2)(b) midsection, pants, and legs.

PO Duran's BWC (Board Review 09) at 05:40 shows PO Duran escorting § 87(2)(b) to the rear of the vehicle after he is handcuffed. At 05:50, PO Duran's right hand appears to be move towards § 87(2)(b) lower body, but is unclear from the footage exactly what is happening, except that § 87(2)(b) says to PO Duran, "That is my phone and my money." At 06:15, Lt. Konoski and PO Boyce handcuff § 87(2)(b) and PO Boyce escorts § 87(2)(b) to the rear of the vehicle. At 06:22, PO Boyce appears to be grabbing around § 87(2)(b) right side pant pocket. PO Boyce then moves to the left side of § 87(2)(b) pocket, but is unclear exactly what is happening. At 06:41, Lt. Konoski handcuffs § 87(2)(b) and hands him over to PO Boyce. PO Boyce then appears to move his hands towards § 87(2)(b) midsection, but it unclear what his happening.

Sergeant Natalie Bautista's BWC (Board Review 20) at 09:01, shows PO Boyce moving his hands towards the left side of § 87(2)(b) pants, but what he does is clearly not depicted. At 09:12, Lt. Konoski handcuffs § 87(2)(b) and brings him to the rear of the vehicle. At 09:26, Lt. Konoski says to PO Boyce, "Just frisk him to make sure he doesn't have any weapons on him." At 09:34, PO Boyce's hands appears to reach towards § 87(2)(b) pants, but what he does is clearly not depicted, except that he appears to move his hands down from § 87(2)(b) waist to his legs. At 09:45, PO Boyce moves his hands around § 87(2)(b) shoulders, and stomach on the outside of § 87(2)(b) clothing.

Lt. Konoski's BWC (Board Review 07) at 09:40, shows him handcuff § 87(2)(b) and telling § 87(2)(b) that he is being detained. Lt. Konoski then appears to say to PO Boyce, identified via investigation, "check him." At 10:00, Lt. Konoski handcuffs § 87(2)(b) and tells § 87(2)(b) that he is being detained. At 10:25, Lt. Konoski says to PO Boyce, "frisk him to make sure he doesn't have any weapons on him."

Lt. Konoski acknowledged instructing PO Boyce to frisk § 87(2)(b) and § 87(2)(b) and PO Duran acknowledged frisking § 87(2)(b). Lt. Konoski and PO Duran both said the three occupants in the vehicle were frisked because their repeated refusal to comply with officers' orders to exit the vehicle raised concerns about officer safety, and the possibility that the occupants were in possession of weapons, and were thus frisked to ensure officers safety. Lt. Konoski and PO Duran had no other reasons for frisking the three occupants in the vehicle, nor did they have any other reasons for believing that the occupants were potentially armed. Lt. Konoski and PO Duran did not recall observing any of the occupants making any movements in the vehicle, nor did they recall observing any bulges on the persons of any of the three occupants. Lt. Konoski and PO Duran acknowledged that none of the three occupants were considered under arrest at the time of the frisk.

Lt. Dym and PO Molina did not recall observing PO Duran and Lt. Konoski frisking the occupants in the vehicle, did not recall if they suspected any of the occupants in the vehicle to be armed or dangerous, did not recall observing any of the occupants making any movements in the vehicle, nor did they recall observing any bulges on the person of the occupants.

An officer can frisk an individual if the officer reasonably believes that the individual is armed and dangerous, People v. DeBour 40 N.Y.2d 210 (1976) (Board Review 29).

Reasonable suspicion that a person is armed and dangerous may arise from the officers' observations or the facts and circumstances of the encounter, including: reasonable suspicion that the suspect has committed, is committing, or about to commit a violent crime; an observation of something on the person of the subject that an officer reasonably suspects to be a weapon; statements from the subject and/or witnesses that the subject is armed; and information known by the officers that the suspect may be carrying a weapon, NYPD Patrol Guide Procedure 212-11 (Board Review 47).

Lt. Konoski and PO Duran said they frisked the three occupants in the vehicle because of the occupants' failure to comply with the officers' orders raised concerns about officer safety, and the possibility of a weapon. Lt. Konoski, PO Duran, PO Molina, and Lt. Dym, however, did not recall observing any bulges on the persons of the three occupants, did not recall observing any movements inside the vehicle or when the occupants exited the vehicle, nor did they articulate any other reasons for believing that the occupants were armed or dangerous. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (Q) Abuse of Authority: Police Officer Manolin Molina issued a summons to § 87(2)(b).

It is not disputed that PO Molina issued § 87(2)(b) a summons for disorderly conduct (Board Review 01).

§ 87(2)(b) did not know why he was issued the disorderly conduct summons and said he and the other occupants in his vehicle did not yell, act violently or disorderly towards any of the officers at any point during this incident.

Lt. Dym acknowledged that § 87(2)(b) received a summons as a result of this incident but did not recall instructing any officer to issue § 87(2)(b) the summons, did not recall what summons § 87(2)(b) ultimately received, nor did he know why § 87(2)(b) was issued a disorderly conduct summons. Lt. Dym, however, acknowledged that there was nothing about § 87(2)(b) behavior that constituted disorderly conduct, and that § 87(2)(b) main offense was failure to comply with lawful orders and obstruction of governmental administration.

PO Molina acknowledged issuing § 87(2)(b) the summons for disorderly conduct, and initially said he was instructed to do so by Lt. Dym. PO Molina then said he exercised his own discretion in issuing the summons, did not recall being instructed by Lt. Dym or any other officer to do so, and said § 87(2)(b) failure to comply with the officers' orders constituted disorderly conduct. PO Molina acknowledged that he did not include the subsection of disorderly conduct of which § 87(2)(b) was in violation in the summons but said § 87(2)(b) violated subsection six of the disorderly conduct law, which reads, "a person is guilty of disorderly conduct when they congregate with other persons in a public space and refuse to comply with a lawful order of the

police to disperse.” (Board Review 31). PO Molina acknowledged that § 87(2)(b) and the other occupants in the vehicle were not congregating, nor were they ordered to disperse, but said the statute still applied to § 87(2)(b) because he failed to comply with lawful orders.

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof: (6) congregates with other persons in a public space and refuses to comply a lawful order of the police to disperse; NYS Penal Law § 240.20 (Board Review 31).

The “public harm” element is what distinguishes the disorderly conduct statute from other offenses. This requirement requires proof of an intent to cause public harm, threaten public safety, or the reckless creation of such a risk. A person may be guilty of disorderly conduct only when the situation extends beyond the exchange between the individual disputants to a point where it becomes a potential or immediate public problem. People v. Baker 20 NY 3d 354 (2013) (Board Review 32).

While there were conflicting statements regarding who authorized the issuance of the disorderly conduct summons to § 87(2)(b) the investigation pled it against PO Molina since he issued the summons and ultimately took responsibility for the decision to do so. PO Molina said that § 87(2)(b) violated subsection six of the disorderly conduct statute, but did not list the exact violation in the summons § 87(2)(b) received. § 87(2)(g) the BWC and officers’ testimonies, all establish that none of the officers ordered § 87(2)(b) and the occupants in his vehicle to disperse or leave the location at any point during this incident. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- § 87(2)(b)
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- § 87(2)(b)
 - [REDACTED]
 - [REDACTED]
- Lt. Dym has been a member of service for 18 years, and has been a named subject in 29 complaints, and 121 allegations, 16 of which were substantiated:
 - Case #201114190 involved a substantiated stop allegation. The Board recommended Command Discipline. The NYPD imposed no penalty.
 - Case #201804541 involved a substantiated discourtesy word allegation. The Board recommended Command Discipline A, whereas the NYPD imposed instructions.
 - Case #201809228 involved a substantiated physical force allegation. The Board recommended charges, and the NYPD has yet to impose discipline.
 - Case #201810625 involved a substantiated property damage allegation. The Board recommended Formalized Training, and the NYPD imposed Command Level Instructions.
 - Case #201900061 involved a substantiated entry of premises allegation. The Board recommended Command Level Instructions, and the NYPD imposed Formalized Training.
 - Case #201902457 involved substantiated physical force, restricted breathing, body cavity search, and strip search allegations. The Board recommended charges, and the NYPD has yet to impose discipline.
 - Case #201903287 involved substantiated frisk, retaliatory summons, and stop of person allegations. The Board recommended charges, and the NYPD has yet to impose discipline.
 - Case #201903682 involved substantiated interference with recording, and retaliatory summons allegations. The Board and the NYPD recommended and imposed Command Discipline B respectively.
 - § 87(2)(g)
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

- § 87(2)(g)
- Lt. Konoski has been a member of service for 19 years, and has been a named subject in 13 CCRB complaints, and 40 allegations, four of which were substantiated:
 - Case #200511684 involved a substantiated frisk allegation. The Board recommended Charges, and the NYPD imposed no discipline.
 - Case #200512992 involved substantiated stop and frisk allegations. The Board recommended Charges, and the NYPD imposed Command Discipline A.
 - Case #201506557 involved a substantiated search of person allegation. The Board and the NYPD recommended and imposed Command Discipline A, respectively.
 - Lt Konoski has a total of six frisk allegations pleaded against him.
- PO Molina has been a member of service for 17 years, and has been a named subject in 12 CCRB complaints, and 26 allegations, one of which was substantiated:
 - Case 201706354 involved a substantiated frisk allegation. The Board recommended Command Discipline, and the NYPD imposed Formalized Training.
 - § 87(2)(g)
- PO Duran has been a member of service for 13 years, and has been a named subject in 11 CCRB complaints, and 32 allegations, five of which were substantiated:
 - Case #201108423 involved substantiated stop and vehicle search allegations. The Board recommended charges, and the NYPD imposed no discipline.
 - Case #201606760 involved substantiated frisk, discourtesy, and retaliatory summons allegations. The Board recommended Command Discipline A, and the NYPD imposed no discipline.
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of March 8, 2022, the New York City Office of the Comptroller had no record of a Notice of Claim being filed in regards this to complaint (Board Review 46).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 1

Investigator: <u>Enoch Sowah</u>	<u></u>	<u>03/14/2022</u>
Signature	Print Title & Name	Date

Squad Leader: <u>Mgr. Joy Almeyda</u>	<u></u>	<u>3.14.22</u>
Signature	Print Title & Name	Date